6/30/06 7:45 AM

House, Senate want electronic employment verification

SHRM HR News

By Bill Leonard

Although two pieces of legislation passed by the House and Senate vary widely in their approach to reforming federal immigration law and policy, the two bills do include common elements, such as increased border security and requiring a nationwide electronic employment verification system. Those features give the conference committee a starting point in attempting to reconcile the differences between the two otherwise dissimilar measures, sources familiar with the issue say.

"Since both the House and Senate bills have proposals for establishing an electronic verification system nationwide, then it's fairly certain that we should expect to see some sort of provision for electronic verification in any final legislation," said Michael P. Aitken, director of governmental affairs for the Society for Human Resource Management.

However, say Aitken and some other critics of the electronic system, the fact that the two chambers are in agreement on the system isn't necessarily a good thing. The electronic verification provisions would have far-reaching consequences for the estimated 5.5 million employers in the United States, according to Aitken and others who have been following the immigration debate closely.

"The full impact of electronic verification proposals needs to be examined carefully and realized before any final legislation is approved," Aitken said.

The House bill (**H.R. 4437**) focuses primarily on increasing enforcement and tightening security along the U.S. border with Mexico and has drawn harsh criticism from opponents who say it is too punishing in its approach. The Senate bill (**S. 2611**) offers a more moderate approach with provisions for a new guest worker program and a new pathway that would allow undocumented immigrants to apply for U.S. citizenship.

The two approaches to immigration reform are so vastly different that most political observers believe that reconciling the two pieces of legislation presents a huge hurdle that Congress probably won't overcome before the November elections.

However, common elements such as border security and electronic verification have the strongest chance of becoming law if Congress enacts some form of immigration reform this year. Legislators are under tremendous political pressure from the White House and their constituents to do something.

Little focus on electronic verification

Since proposals such as the guest worker program and the pathway to citizenship for an estimated 11 million undocumented workers have grabbed the attention of the national media and lawmakers, relatively few Americans have focused on the impact a new electronic verification program would have on U.S. employers, sources say.

Richard M. Stana, director, homeland security and justice, for the Government Accountability Office, gave **testimony** to a Senate subcommittee on June 19. Stana stated that making the current pilot electronic verification program mandatory could overwhelm the U.S. Citizenship and Immigration Services (USCIS).

The existing program is known as Basic Pilot. Approximately 8,600 employers have enrolled in it but only about half participate actively, according to USCIS statistics.

According to Stana, the Basic Pilot program shows promise and could be vastly superior to any other employment verification system. However, the system must overcome several major hurdles before being expanded to cover all employers, he told the subcommittee.

Several weaknesses in the pilot program's implementation, such as system problems with detecting identity fraud and delays in inputting data, "could adversely affect any expanded use of the pilot program if not addressed immediately," Stana testified. Currently, 15 percent of employer submissions to the Basic Pilot program do not pass the initial verification and must be examined and re-verified by USCIS investigators.

The process for re-verifying and confirming an employee's status to work in the United States takes approximately 14 days. However, that workload and turnaround time could increase dramatically if the program were expanded to cover all U.S. employers.

The Bush administration's budget request for the Department of Homeland Security for fiscal year 2007 includes an increase of $135 million earmarked specifically to expand the current pilot program nationwide. The agency doesn't appear to be ready to manage a rapid expansion, though.

"USCIS officials have said that they have serious concerns about the agency's ability to complete timely verifications if the number of Basic Pilot program users were greatly increased," Stana said.

Under the Senate bill, employers would have up to 63 days to receive final confirmation that an employee has the proper authorization to work in the United States. The House bill cuts the response time to 10 days for an employer to receive final confirmation of an employee's work status. When combining initial filing and response times, the House provision would require 16 days vs. the Senate's turnaround time of more than two months.

Re-verification of existing employees

In addition, the House and Senate bills contain provisions that would require employers to re-verify the work authorization status of current employees. Under the House measure, employers would have to re-verify all workers. The Senate bill would require re-verification of employees in "critical infrastructure" industries such as transportation and health care. Employers previously cited for violations of immigration laws would be required to re-verify employees as well.

Both bills address the question of verifying the work status of subcontractors. The House bill says employers will be found liable only if company officials had actual knowledge that a subcontracting firm hired undocumented workers. The Senate bill would require businesses to place specific language in contract agreements that explicitly prohibits subcontractors from using undocumented workers.

Under the Senate measure, subcontractors would be required to provide an employer identification number issued by the Internal Revenue Service. The bill would require employers to submit the number to the national electronic verification system.

Benefits issues could cause problems

The timeframe for verification of new and existing employees in the two bills could prove problematic for employers.

"If the final determination is that the employee is not authorized to work in the United States, then does the employer have to fire the worker?" Aitken asked. "If that's the case and the employee has worked for 60 days, then employers could face a lot of other issues, such as benefits coverage, possible COBRA coverage, training expenses and then the associated expenses of hiring, recruiting and training a new worker."

The House provision, while apparently more employer-friendly, would place considerably more pressure on the USCIS. "And if they can't turn around the verifications in 16 days, what should employers then do? Do they keep the worker on or suspend them until they receive final verification?" Aitken asked. "There are a lot of questions that need to be answered before Congress proceeds with these electronic verification provisions."

The time frame for verification appears to be the largest difference between the two bills. The Senate bill would redefine some of the documents workers must present to employers for verification and would limit the documents to government-issued identification cards such as U.S. passports. The House bill would keep the documentation currently required for I-9 forms. However, this too raises questions about liability that employers might face if they accept documents that turn out to be forged.

"Many of the forged identity documents can be very good and convincing," Aitken said. "Should employers also become experts in spotting forged identity documents? Congress has a lot to do on these issues before finalizing any reform package, and they are rapidly running out of time to resolve these questions."

Bill Leonard is senior writer for HR News.